

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
BRIEF**

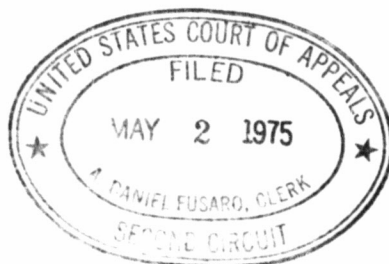




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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 74 Cr. 159

PHILIP STOLLER and MARTIN FRANK, :

Defendants. :

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BEFORE:

HON. HAROLD R. TYLER,

District Judge

New York, New York

September 3, 1974 - 2:30 p.m.

APPEARANCES:

PAUL J. CURRAN, JR., ESQ.,  
United States Attorney for the  
Southern District of New York

BY: IRA LEE SORKIN, ESQ.,  
Assistant United States Attorney.

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.,  
Attorneys for Defendant Stoller,

BY: MILTON GOULD, ESQ.,  
RONALD H. ALLENSTEIN, ESQ.,  
JOHN J. GRIMES, ESQ.,  
Of Counsel.

FELDSHUH & FRANK, ESQS.,  
Attorneys for Defendant Frank,

BY: SIDNEY FELDSHUH, ESQ.,  
DONALD A. DERFNER, ESQ.,  
Of Counsel.

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(A jury was duly impaneled and sworn.)

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(Three alternate jurors were duly selected and  
sworn.)

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(A luncheon recess was taken.)

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2 AFTERNOON SESSION

3 2:30 p.m.

4 THE COURT: I am told there is some problem, before  
5 we bring the jury in.

6 MR. FELDSHUH: Your Honor, I would just like to get  
7 a little clarification before we start.

8 I made an application to your Honor earlier today  
9 about the presence of Mr. Doonan at the counsel table for the  
10 Government. Mr. Doonan, as I understand it, is not an attor-  
11 ney. He has objected to being served with a subpoena on behalf  
12 of the defendant Frank, and we intend at this stage to tell the  
13 Court that we expect that we are going to put Mr. Doonan on  
14 the witness stand in connection with this indictment.

15 I believe that from the point of view of good house-  
16 keeping and from the point of view of eliminating any prejudice  
17 that might result to the defendants, Mr. Doonan should be ex-  
18 cluded from this courtroom during the trial.

19 MR. SORKIN: Your Honor, I think it is generally  
20 conceded that the agent who knows most about the case and  
21 did the bulk of the investigation is permitted to sit in at  
22 trial, even if he is going to be a witness.

23 Now, we recognize the fact that it is within the  
24 sole discretion of the Judge. We have some cases here --  
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2 THE COURT: You want him with you?

3 MR. SORKIN: That is correct, your Honor.

4 THE COURT: Now, I don't see any prejudice, Mr.  
5 Feldshuh, in any event, because you are going to call  
6 him as a witness, and I don't see that we are necessarily  
7 going to hear any witnesses from the Government's point of  
8 view that are going to subvert or undercut his ability to  
9 be a good witness, I just don't understand it.

10 MR. FELDSHUH: Well, your Honor, basically here  
11 there is a very serious conflict on the facts.

12 THE COURT: Well, fine, but that doesn't have  
13 anything to do with what I just mentioned. He has been  
14 working on this case as the case agent. You have decided  
15 to call him as a witness. Fine, but that doesn't mean that  
16 he gets excluded from the courtroom willy nilly.

17 MR. FELDSHUH: No, basically he is an important  
18 witness for the defense.

19 THE COURT: Well, I assume any witness is important.  
20 I don't understand you.

21 MR. FELDSHUH: Well, the point is if we do call  
22 him as a witness and he has heard the testimony of every  
23 other witness from this witness box I say it is impossible  
24 for him to be not prejudiced by or colored by that kind  
25 of hearing.

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2 THE COURT: He has been working on the case already,  
3 so that if he is prejudiced in that way and to that extent,  
4 if he isn't already then he isn't worth his salt as an  
5 agent.

6 So the whole thing strikes me as an Alice in  
7 Wonderland approach. From all that you tell me I don't  
8 see that it would do a bit of good except to make life a  
9 little miserable for this Assistant United States Attorney,  
10 which I don't think is the standard we ought to follow.

11 MR. FELDSHUH: Well, I respectfully submit that  
12 in weighing the balance of the interests of this  
13 defendant --

14 THE COURT: I don't see that it hurts the defense  
15 at all. He has worked on it. I know. I have held an  
16 evidentiary hearing in which his name was bandied about  
17 with reckless abandon.

18 MR. FELDSHUH: That doesn't mean when he is on  
19 the witness stand and testifying that what he knows  
20 isn't going to be colored by what he hears during this trial.

21 THE COURT: Well, I don't know that I am getting  
22 through to you, but I am going to deny the application,  
23 because I don't see any prejudice to the defendants that  
24 wouldn't exist in any event. Let's move on.

25 MR. FELDSHUH: May I make one other request.

Mr. Frank is presently suffering from ileitis and during the course of this trial may be obliged to leave the courtroom for a few minutes to go to the men's room. If that be the case, without making an application each time may I have your Honor's permission at this time, without having the trial interrupted, if Mr. Frank should have to leave the courtroom it will be for that purpose and that the trial may go on out of his presence.

THE COURT: Is that agreeable, Mr. Frank?

DEFENDANT FRANK: Yes, your Honor.

THE COURT: Now, with regard to the 3500 material --

THE COURT: Let's not get to the 3500 material. We aren't there yet.

MR. GOULD: One more thing that I think is appropriate. Your Honor will recall that the principal indictment here is a superseding indictment.

THE COURT: Is that correct?

MR. GOULD: There is an old indictment 73 Criminal 1050. I think it is appropriate that that be formally dismissed at this time, since the Government is proceeding on the superseding indictment.

THE COURT: I would think that the Government ought to consent to that, but I won't be sure of it until I hear it.

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2 MR. SORKIN: Your Honor, I don't think this is  
3 the appropriate time to consent to this. The normal  
4 procedure that we follow in our office is to file the  
5 appropriate nolle prosequi. I can't consent to dismiss it.  
6 There may be a mistrial with respect to the five counts.  
7 It may have to be tried again.

8 MR. GOULD: Is counsel representing to the Court  
9 that a nolle prosequi will be filed with respect to  
10 73 Criminal 1050?

11 MR. SORKIN: Your Honor, I can say to that, no.

12 MR. GOULD: Then what are we proceeding on?

13 THE COURT: We are proceeding on the superseding  
14 indictment.

15 MR. GOULD: Then they have made an election,  
16 and the other one has to be dismissed.

17 THE COURT: Well, I am not going to dismiss it, but  
18 I am not going to wait for a nolle prosequi because I have  
19 found from bitter experience over many years that I have  
20 to write letters to get a nolle prosequi and I don't like  
21 it. So at the closing moments of the trial you renew  
22 that motion and I think I will look on it with favor.

23 MR. GOULD: All right, sir.

24 THE COURT: All right. Can we get the jury in?

25 MR. SORKIN: By the way, your Honor, excuse me.



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2 Mr. John Flannery, who is a new Assistant United States  
3 Attorney will be sitting here during the trial and will  
4 be assisting Mr. Doonan and myself. You might announce  
5 that to the jury. We didn't know that at lunchtime.

6 THE COURT: Well, why didn't you know?

7 MR. SORKIN: Your Honor, he was only sworn in  
8 this morning.

9 THE COURT: Well, let's not have him in here.  
10 What we just went through before lunch, we aren't going  
11 to have the jury upset --

12 MR. SORKIN: Well, the Government is entitled  
13 to have another Assistant here.

14 THE COURT: Well, the Government is entitled to  
15 do a number of things if they act with reasonable sense,  
16 but to have another unexpected visitor at the counsel table  
17 is uncalled for.

18 MR. SORKIN: Your Honor, Mr. Flannery was sworn  
19 in this morning.

20 THE COURT: Yes, but that is not my fault. That  
21 is not the fault of the defendants and their counsel.

22 Now, I am willing to play ball all the way, but  
23 I am not willing to play ball this way. There is no reason  
24 why he has to come in on this case. You should have  
25 thought of this this morning. Get him to sit in on another

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2 case. No offense to you, Mr. Flannery.

3 MR. SORKIN: Would your Honor object to him  
4 sitting in back of the courtroom?

5 THE COURT: No.

6 (Jury enters courtroom.)

7 THE COURT: As I have told you, we come to  
8 that portion of the trial where we hear brief opening  
9 statements of counsel on behalf of their clients and the  
10 order will be, Government, the prosecutor first and then  
11 defense counsel.

12 Mr. Sorkin.

13 MR. SORKIN: Thank you, your Honor.

14 May it please the Court, ladies and gentlemen  
15 of the jury. As Judge Tyler has indicated to you my name  
16 is Ira Lee Sorkin. I am an Assistant United States  
17 Attorney in the office of Paul J. Curran, who is the United  
18 States Attorney for the Southern District of New York and  
19 that is the district in which all of you live. It's the  
20 federal district in which all of you live.

21 It is my responsibility and it is my duty as an  
22 Assistant to try this case before you. Seated with me at  
23 counsel table is Mr. Thomas Doonan. Mr. Doonan is a  
24 criminal investigator in the office of the United States  
25 Attorney, and he is going to be assisting me at trial.

2 Now, there are two defendants here: Philip Stoller  
3 and Martin Frank, and, as you heard before, Mr. Stoller is  
4 represented to Milton Gould, Ronald Alenstein and John Grimes,  
5 and Mr. Frank, who, in addition to being a defendant, is also  
6 an attorney, is represented by Sidney Feldshuh and Donald  
7 Derfner.

8 Judge Tyler has read to you some relevant portions  
9 of the indictment. I am not going to read the indictment to  
10 you. I am just going to tell you that Mr. Stoller has been  
11 charged in this case by a Federal grand jury with one count  
12 of conspiracy, one count of fraud in the offer and sale of  
13 the securities of a company called Training With The Pros, Inc.,  
14 four counts of fraud in connection with the purchase and sale  
15 of the securities of securities of Training With The Pros,  
16 Inc., four counts of using the United States mails to commit  
17 fraud, five counts of making false statements under oath be-  
18 fore the United States Securities & Exchange Commission and  
19 three counts of obstruction of justice.

20 Mr. Frank has been charged with the same count of  
21 conspiracy, one count of fraud in the offer and sale of the  
22 securities of Training With The Pros, Inc., four counts of  
23 fraud in connection with the purchase and sale of the  
24 securities of Training With The Pros, Inc., four counts  
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2 of using the United States mails to commit fraud and two  
3 counts of obstruction of justice.

4 Now, as Judge Tyler also indicated, there are two  
5 other defendants in this case. Alfred Herbert who as you  
6 will hear from the evidence is a Swiss citizen and was em-  
7 ployed at the time of the facts of this case by a Swiss bank,  
8 the Bank Hofmann, in Zurich, Switzerland, and Jerome  
9 Ailen, the other defendant. Neither Mr. Allen nor Mr.  
10 Herbert are on trial here today, but you are going to hear  
11 testimony about them and you are entitled to consider what,  
12 if any, involvement they had --

13 MR. GOULD: I am going to object to this, your  
14 Honor. It is not an opening.

15 THE COURT: Certainly.

16 MR. GOULD: That is an opening as to what they  
17 are entitled to consider.

18 THE COURT: Well, I agree it is an unfortunate  
19 way of putting it.

20 MR. GOULD: Well, it is an erroneous way of  
21 putting it. It is unlawyerlike.

22 THE COURT: Well, be that as it may, I will ask  
23 Mr. Sorkin then to start over again.

24 MR. SORKIN: You are going to hear testimony  
25 about this case about Mr. Herbert and in addition, testimony

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2 about Mr. Frank and Mr. Stoller and Mr. Allen, and you are  
3 going to see that all four of them were part and parcel  
4 of a conspiracy to violate the laws of the United States.

5 Now, before you see or hear any of the evidence  
6 I have the opportunity to provide you with a framework  
7 or brief outline in which each of you, as bright, intelligent  
8 citizens, can place the testimony and the documents which  
9 come into evidence during the course of the trial, in other  
10 words, to give you a summary of what you are going to hear  
11 and what you are going to see.

12 Now, Judge Tyler indicated to you that this  
13 case concerns stock, securities, and if you are like most  
14 people, when you heard that, you probably were a little  
15 apprehensive, because to most people the stock market, the  
16 securities business, the financial world, brokerage houses  
17 and Wall Street in general is all a little bit confusing.

18 Oh, you read about it in the financial pages of  
19 the newspaper. Some of you may have even bought stock  
20 or hold stock at this time, and you know that it is some-  
21 thing that takes place in Wall Street, but you are really  
22 not sure how it all functions, the mechanics of it.

23 Well, let me tell you at the outset -- and the  
24 Government wants you to remember this right through this  
25 trial -- in a nutshell this case is about fraud, deceit,

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2 lies, threats, payoffs and misrepresentations.

3 Now, we submit to you, ladies and gentlemen,  
4 each and every one of you, that you don't have to be an  
5 expert on Wall Street to understand --

6 MR. GOULD: I object to this, your Honor.  
7 Improper opening. This is summation.

8 THE COURT: I agree, and we don't need to sum  
9 up now, Mr. Sorkin. Let's just tell the jury what the  
10 Government intends to prove.

11 MR. SORKIN: Very well, your Honor.

12 In a sense, the Government is going to show --  
13 this is really a simple case. The evidence is going to  
14 show that these defendants and others whom you will hear  
15 about committed fraud, made threats, misrepresented facts,  
16 lied --

17 MR. GOULD: Your Honor, I don't know if I can  
18 get it across to Mr. Sorkin, but I suggest to your Honor  
19 very respectfully that he is violating the Court's direction.

20 MR. SORKIN: Your Honor, I am trying to phrase  
21 it to comply with your instructions, but I am going to  
22 move into the evidence.

23 THE COURT: I wish you would. Let's get to what  
24 you are going to prove.

25 MR. SORKIN: Very well. In a sense, ladies and

2 gentlemen, the evidence in this case is going to tell a  
3 story and it is going to tell a story which you might term  
4 the rise and fall of the securities of Training With The  
5 Pros, Inc., and the story is going to be told to some extent  
6 in what I would like to call a different language or a  
7 foreign language to some of you, and that is the language  
8 of Wall Street.

9 For instance, you are going to hear testimony ...  
10 that a Regulation. A offering is one method whereby  
11 companies can sell their shares to the public, from private  
12 companies to public companies, and you are going to hear  
13 testimony which will tell you that a broker is somebody  
14 who buys and sells stock for other people, and he gets  
15 commissions for it, and you are going to hear testimony  
16 that a cross in the contexts of this case, and it is spelled  
17 the same way one of your jurors spells her name, the cross  
18 in the context of this case is where you take stock from  
19 one account and you put it into another account, and the  
20 evidence is going to show in this case that the cross took  
21 place in a bank in Zurich, Switzerland and you are going  
22 to learn some other things of what a thin' float is and what  
23 a nominee is, because in this case there were nominees  
24 and in the context of this case you are going to learn that  
25 a nominee is someone who allowed his name to be used on



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2 stock but someone else owned the stock.

3 And more importantly, you are going to learn  
4 about the secret bank accounts with strange-sounding code  
5 names in Zurich, Switzerland, which were set up by these two  
6 defendants and others and you are going to hear that Mr.  
7 Frank's account in Zurich, Switzerland, was set up, as the  
8 evidence will show, by Mr. Stoller and Mr. Allen with a code  
9 named Lance.

10 And you are going to hear that Mr. Stoller's  
11 bank account which he set up with Mr. Allen and was set up  
12 by Mr. Herbert was code-named Shirley, and you will  
13 subsequently learn that Shirley is the middle name of Mrs.  
14 Stoller.

15 Now, let me say at the outset that nothing I say  
16 or what counsel says is evidence in this case. The only  
17 evidence in this case is going to come from that witness  
18 chair and no place else, and in this respect, very briefly,  
19 as I move into the evidence, let me remind you -- I would  
20 like to think of what Mark Twain once said about the  
21 difference between thunder and lightning. He said thunder  
22 is loud and impressive, but it is lightning that does  
23 the work.

24 Well, in this area of the courtroom, ladies and  
25 gentlemen, there may be a lot of thunder, but the lightning



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is going to come from the witness stand, and remember that throughout the trial in this case.

Now, a stock certificate of Training With The Pros really can't tell you much, it can't tell you whether the company is run poorly or whether it is run well, who the management is, what the company does, where it is located. It is just a piece of paper. So you have got to go elsewhere to find out information about a company. And that is why in this particular case when the time came for certain people to rely on the facts of this company and about this company, people such as brokers and investors, people who lost money in this particular stock, their only source at the time was Mr. Stoller and Mr. Allen, and you will hear testimony how Mr. Stoller and Mr. Allen lied to them to get them to buy stock so that they would put their customer in the stock.

1  
2 Now, before I told you that the evidence is  
3 going to tell a story.

4 Let me briefly give you now in an outline,  
5 very quickly, what the evidence is going to show you in this  
6 case. It is going to show that back in 1967 a man by the  
7 name of Ramon D'Onofrio met another gentleman by the name  
8 of Bud Moss, and Mr. Moss asked him if he would help his  
9 company, which at that time was called M & H Studios, go  
10 public, become a public corporation.

11 Well, Mr. D'Onofrio refused and Mr. Moss returned  
12 again in 1968, and this time Mr. D'Onofrio said yes, he will  
13 help Mr. Moss.

14 And Mr. D'Onofrio, who at that time had a  
15 Swiss bank account at Bank Hofmann, a secret account, which  
16 was opened up by Messrs. Stoller, Allen and Herbert, code  
17 name "Gypsy," decided to help Mr. Moss and get a piece of  
18 the company, a large block of stock of the company, and they  
19 decided that this was going to be a Regulation A offering  
20 and you will hear testimony that all Regulation A offering  
21 means is that you are going to sell stock to the public  
22 for \$300,000, no more. It can be less. You can file  
23 with the Securities and Exchange Commission for Regulation A.

24 Well, as you will find out, they eventually  
25 decided to sell 42,000 shares at \$7 a share to the public.

That comes out to about \$294,000 -- less than the \$300,000. And Mr. D'Onofrio brings in at the time his attorney and friend, a fellow by the name of Joseph Pfingst, and in July 1968, some time around the summer of 1968, Mr. Pfingst and Mr. D'Onofrio take a plane ride with Mr. Stoller and Mr. Allen to Zurich, Switzerland, and they have a meeting with Mr. Stoller and Mr. Allen at the Bauerlac Hotel, and at the Bauerlac Hotel they set up the deal, and the deal in substance is that Mr. Stoller and Mr. Allen and Mr. D'Onofrio are going to get control of all of the stock or the company or at least control of that much stock so that they will control the company when the company becomes public.

They agree that they are going to have to have the Swiss connection in this case send an indication letter to Training With The Pros, indicating that 30,000 shares out of 42,000 shares that the company is selling to the public, almost 75 per cent of all the shares, are going to go to Bank Hofmann.

Well, they knew that Bank Hofmann wasn't going to get the stock. The stock was going to be placed in three accounts at Bank Hofmann, in the account Gypsy, the account Shirley and the account Erika. And they agree that after the stock is placed into these accounts -- by the way, you are going to learn, ladies and gentlemen,

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2 why people have secret code name accounts in foreign banks.

3 And after they place this stock in these  
4 accounts they decide they are going to manipulate the stock,  
5 run it up to about \$50 a share, from seven to 50. You  
6 don't have to be a mathematician to figure it out, 30,000  
7 shares times 50 is well over a million dollars.

8 And they agree that instead of the 30,000 they  
9 would have the bank indicate the 30,000, but they would  
10 probably take a little less, they would settle for twenty  
11 or 25,000.

12 How are they going to get their money? Well,  
13 they had two setups at Bank Hofmann. There were two clients  
14 of Mr. Stoller and Mr. Allen, Joseph Bonavia and a Mr.  
15 Weissinger, and they had opened Swiss bank accounts, Mr.  
16 Bonavia's bank was code named Barbin, and Mr. Weissinger's  
17 account was code named Pompeii, and they were going to cross  
18 the stock from Gypsy, Erika and Shirley, into Barbin and  
19 Pompeii, debit Barbin and Pompeii, and credit Gypsy and  
20 Shirley, and they would have a million dollars.

21 Now, Mr. Weissinger and his partner were clients  
22 of Mr. Allen, and in this so-called deal they were going  
23 to have to get Mr. Weissinger and Mr. Bonavia out of the  
24 stock, so after they cross it at \$50 a share, they are going  
25 to start touting the stock to brokers of the United States,

1 the Eleanors, as they call them, and you are going to see  
2 in the flesh a real, live Eleanor, because an Eleanor is  
3 one of the people whom Mr. Allen and Mr. Stoller touted the  
4 stock to, and then Miss Wein -- Mrs. Wein at the time -- and  
5 many other brokers would get on the phone and call their  
6 customers and put their customers into it.  
7

8 So as Bonavia and Weissinger are selling out their  
9 stock, the Eleanors, the suckers, the people who don't know  
10 what is going on, are putting the innocent public investors  
11 into this stock, and you are going to hear from some of these  
12 investors as well.

13 Well, after this meeting at the Bauerlac Hotel they  
14 come back to the United States; they pay a visit to Mr. Frank,  
15 and they don't tell him the details at the time; they just tell  
16 him they have got another deal -- Bank Hofmann. "Blow it  
17 off to Bonavia and Weissinger." You will learn what that term  
18 means. They are going to blow it off to Mr. Bonavia and Mr.  
19 Weissinger, and Mr. Frank says, "It's a hot deal. Put some in  
20 my account," because Mr. Frank had an account named Lance in  
21 Zurich.

22 Well, things are going fine. Mr. D'Onofrio and  
23 Mr. Pfingst and Mr. Moss, who is the president of M & H  
24 Studios, at that time begin working on the offering  
25 circulars in the fall of 1968, but something happens,

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2 because the company, Training With The Pros -- they now have  
3 a name, Training With The Pros, doesn't file its Regulation A  
4 offering or its offering circular as it is called, until  
5 about October 25, 1968.

6 Well, you know what happened. That indication  
7 letter comes over from Bank Hofmann on October 17, eight  
8 days before it is filed, and the question you must ask your-  
9 self when you hear this testimony is, how did a foreign  
10 bank --

11 MR. GOULD: Now, if your Honor please, there  
12 we go again.

13 MR. SORKIN: I am sorry, your Honor. I will  
14 rephrase it.

15 As you hear this testimony, bear in mind that  
16 this indication letter, which you will see is dated October  
17 17, the company hasn't told the world or anyone that they  
18 are filing a Regulation A, and they don't do that until  
19 October 25.

20 So what do Mr. Stoller and Mr. D'Onofrio and  
21 Mr. Allen do? They run to the architect of the scheme --  
22 and that is what the evidence is going to show -- Mr. Martin  
23 Frank, the lawyer for Mr. Stoller, and Mr. Allen, and they  
24 show that indication letter to Mr. Frank, and Mr. Frank  
25 says, "You can't do it this way. You can't indicate

1           for 30,000 shares.   You are going to get caught.   I will  
2  
3           tell you how to do the deal."

4                       So Mr. Frank devises a plan where Mr. Stoller  
5           and Mr. Allen and Mr. D'Onofrio are going to see nominees,  
6           and he tells them, "Go out now and find five people that  
7           you can trust.   Put the stock in their name.   Then as  
8           soon as the company goes public, buy it back from them, turn  
9           around and sell it to the Bank Hofmann."

10                      And of course you will hear testimony that  
11           they really didn't sell it to the Bank Hofmann.   The stock  
12           went into the accounts of Shirley, Erika and Gypsy.

13                      Now, what does Mr. Frank get out of this?  
14           Well, Mr. Frank is promised \$15,000 plus an additional  
15           \$15,000, a thousand shares of Training With The Pros at  
16           \$50 a share.

17                      And who are these nominees?   Well, you are going  
18           to hear from some of them.   Mr. Stoller, he used his wife,  
19           his mother, his mother-in-law, the brother-in-law of a co-  
20           conspirator in this case, Joseph Arden, a man named Herman  
21           DeLancy, and a neighbor, William Brief.

22                      And whom did Mr. Allen use?   Well, Mr. Allen  
23           used himself.   He took a thousand shares, but in order  
24           to disguise the transaction at that time he had the stock  
25           registered in his wife's maiden name, Janice Hickock.   So



1 he used Janice Hickock, he used himself, he used Joseph  
2 Arden, a co-conspirator in this case, he used Sarah Strizive  
3 which is the maiden name of Joseph Arden's wife, and another  
4 name, a thousand shares each.  
5

6 Mr. D'Onofrio used five people, and you are  
7 going to hear from some of those people. Mr. Straub,  
8 Mrs. Osborne, Paul Straub, Warren Bundy, Ruth Richter and  
9 Katherine Howe.

10 But Mr. D'Onofrio didn't get 5000 shares. He  
11 only got 4900 shares, but he set it up a little differently.  
12 He didn't use nominees. He gave them some stock and got  
13 it back from them after the company went public, and in  
14 figuring it out he only got 4900 shares. So we are talking  
15 about 14,900 shares here out of an entire issue of 42,000  
16 shares.

17 So we have 27,100 shares remaining, and where  
18 does that stock go? Well, about 25,000 shares of it goes  
19 to friends and associates of Mr. Stoller, Mr. Allen, and  
20 Mr. D'Onofrio.

21 Now we go into 1969. The stock goes public  
22 on February 4, 1969. That is the effective date. And  
23 you will learn from the witnesses what the effective date  
24 is, what it means to go effective, and the time comes now  
25 to take the stock over to Bank Hofmann, put it into the



1           mpb-8  
2           bank account, run the stock up and then blow it off to Mr.  
3           Weissinger and Mr. Bonavia.

4                   The time comes when Mr. D'Onofrio and Mr. Stoller  
5           go overseas, and they take the stock, and they go get their  
6           certificates guaranteed.

7                   Now, all that really means -- and you are going  
8           to hear this -- is when someone gets a signature guaranteed  
9           on the back of the stock certificate, whoever guarantees  
10          that signature is vouching that that is the person who it  
11          is. And there are only two kinds of entities that  
12          guarantee signatures. One of them is a commercial bank, and  
13          one of them is a member firm of the New York Stock Exchange.

14                   Well, Mr. Frank at the time doesn't know that, so  
15          he guarantees some of Mr. Allen's people. Mr. Stoller  
16          and Mr. D'Onofrio take the stock overseas. This is around  
17          the end of February or early March of 1969. Fred Herbert  
18          says, "No good. It has got to be a member firm or a  
19          commercial bank."

20                   The stock comes back again. Mr. Allen gets  
21          his certificates, and I keep saying "his," because the evidence  
22          is going to show that it really is his stock and Mr.  
23          Stoller's and Mr. D'Onofrio's. Forget the nominees. They  
24          get Mr. Stoller and Mr. D'Onofrio, as the evidence is going  
25          to show, use their names.

1                   mpb-9  
2                   So they take the stock overseas again, and they  
3                   have a meeting around March 9th or March 10th, and the stock  
4                   now has already moved from seven dollars a share on February  
5                   4, 1969, to about \$50 a share on March 12, 1969.

6                   And you are going to hear how it got up there  
7                   by Messrs. Stoller, Allen and D'Onofrio touting the stock  
8                   to dealers in the stock -- and you will learn what a dealer  
9                   is -- to brokers in the stock, buying the stock in the  
10                  open market for the purpose of raising the price of the  
11                  stock, but the net effect is that on March 12, 1969, that  
12                  stock is almost \$50 a share.

13                 They communicate to Fred Herbert and tell him  
14                 to make the cross and the cross is made. Mr. Bonavia buys  
15                 9100 shares and Mr. Weissinger buys 9100 shares.

16                 That adds up to 18,200, not 14,900. There is  
17                 3300 shares that you will see become accounted for because  
18                 that is the stock that Mr. Stoller and Mr. Herbert and Mr.  
19                 D'Onofrio and Mr. Allen are buying up in the after-market  
20                 through Bank Hofmann.

21                 Well, the net effect of it all, ladies and  
22                 gentlemen, is that Mr. Bonavia pays approximately \$450,000  
23                 for his 9100 shares and Mr. Weissinger pays the same  
24                 amount.

25                 So on or about March 15, 1969, Messrs. Stoller,

Allen and D'Onofrio have \$900,000.

There is one hitch, and this hitch takes place toward mid-March. There is a brokerage firm called Emanuel Deetjen & Co. It is no longer in existence, but it was in existence back in the late sixties.

Deetjen now is asked by Bank Hofmann to take the stock and put it into what is called street name. All street name is really name of the firm, Emanuel Deetjen & Co., take it out of the name of the nominees and put it into your name, Mr. Emanuel Deetjen.

Why do they have to do that? Because the evidence is going to show they can't very well sell the stock to Bonavia and Weissinger in their accounts if it is registered to Mr. Stoller, his mother-in-law, his wife and so on.

Well, Deetjen gets this request, and Deetjen refuses to transfer it into street name because they don't know who these 15 people are, 15 people who have 14,900 shares registered in their names.

Panic sets in, and Messrs Stoller, D'Onofrio and Allen run back to the architect of the scheme, Mr. Frank, and Mr. Frank tells them, "Get receipts from your people to show that they sold the stock to you. Then get a receipt from Bank Hofmann to show that you sold the stock to Bank

1 mpb-11

2 Hofmann. Get the chain of custody."

3 So Messrs. Stoller, D'Onofrio and Allen run out  
4 and get receipts from all their people.

5 Mr. Allen at the time was under indictment in  
6 this court and Mr. Allen couldn't go overseas. But Bank  
7 Hofmann, as you will hear, knew Mr. Frank, so they tell Mr.  
8 D'Onofrio and Mr. Stoller, "Have Mr. Frank notarize Mr.  
9 Allen's receipts, because when you bring them over, we know  
10 Mr. Frank, so we will accept them."

11 Well, sure enough, Mr. Frank notarizes, puts  
12 his notary on the receipts of Mr. Allen's nominees, but he  
13 doesn't date the notary, because the receipts are signed  
14 in late March, and they say the sale was made back in  
15 February.

16 Well, these receipts are sent overseas and  
17 they are given to Bank Hofmann, Mr. Herbert. Mr. Herbert  
18 forwards them on to Emanuel Deetjen. But there is also  
19 a slipup there. Mr. Herbert, in his efforts, his desperate  
20 efforts to get the stock transferred, so he would get his  
21 cut out of the deal -- and he got 10 per cent right off the  
22 top -- sends a letter to Emanuel Deetjen and in that letter  
23 he discloses the fact that Messrs. Stoller, D'Onofrio and  
24 Allen are clients of Bank Hofmann, and you are going to  
25 see that letter.

1 mpb-12

2 Now, the stock is now transferred into the name  
3 of Emanuel Deetjen. Messrs. Stoller, Allen and D'Onofrio  
4 and Mr. Frank and Mr. Herbert have \$900,000 to split in  
5 any way that they wish, and now it comes time for Mr.  
6 Stoller and Mr. Allen to come back to the United States  
7 and tout the stock, get it above that \$50 level, get it to  
8 a price where we can get Bonavia and Weissinger out at a  
9 profit, and sure enough, Mr. Stoller and Mr. Allen come  
10 back and they start touting the stock to innocent brokers  
11 and you are going to hear from those brokers.

12 And what do those brokers do? Having been  
13 told that this is the greatest stock since God knows what,  
14 they call up their customers and they put their customers  
15 in the stock.

16 People who bought this stock at \$50, \$60 and \$70  
17 a share.

18 Well, pretty soon, the United States Securities  
19 and Exchange Commission begins an investigation into Training  
20 With The Pros, and this investigation begins at around the  
21 spring of 1969, June, and you are going to hear evidence  
22 about what happened amongst Messrs. Stoller, Allen, Frank  
23 and D'Onofrio when this investigation began. He attempts  
24 to cover up, he attempts to conceal, he attempts to hide  
25 what they had done.

1  
2 Now, remember Judge Tyler and I told you that  
3 Mr. Stoller is also indicted on five counts of making  
4 false statements to the United States Securities and Exchange  
5 Commission.. During the course of that investigation, Mr.  
6 Stoller testifies under oath contrary to what you will  
7 hear Mr. Frank advised him to, and Mr. Stoller virtually  
8 admits that it was pre-arranged, the stock would go to the  
9 nominees and they would buy the stock back, and Mr. Stoller,  
10 in August of 1969, has another session with the SEC and  
11 admits to the representatives of the SEC that it was pre-  
12 arranged, he did give the stock to his mother and his mother  
13 in-law, and his wife and these other people, Lansky and  
14 Brief, but he doesn't admit at any time that although they  
15 sold it to the Bank Hofmann, it was really his sham.

16 That is what the evidence is going to show. They  
17 sold it to Bank Hofmann, but they really paid for the stock  
18 themselves. That is what happened here. They bought the  
19 stock for themselves because the stock went into their  
20 own accounts.

21 Now, let me very briefly tell you something  
22 about what happened which led to the second indictment in  
23 this case:

24 Mr. Stoller, as I indicated, is charged with  
25 three counts of or obstruction of justice; Mr. Frank with

two counts of obstruction of justice.

In the summer and fall of 1973, a grand jury in this building began an investigation into Training With The Pros. What happened in the underwriting and the after-market, and at the time of the investigation, Mr. Allen became a fugitive, fled to Switzerland and was in Switzerland at the time the grand jury began its deliberations, and you are going to hear testimony about the desperate, frantic attempts by Mr. Frank and Mr. Stoller to keep Mr. Allen out of the United States so he wouldn't come back and testify.

You are going to hear about payoffs, you are going to hear about attempts to get Mr. Allen to Panama, to the Bahamas and elsewhere, because you will hear that the defendants really were worried about Mr. D'Onofrio and Mr. Allen testifying.

You will hear testimony that they weren't worried about Mr. D'Onofrio. But Mr. D'Onofrio and Mr. Allen, they were afraid of them, so they paid Mr. Allen to keep overseas.

Well, Mr. Allen came back to the United States in January of 1974 and at that time he began to cooperate with the United States Government.

In the late winter, in March, to be specific, Mr. Allen's life gets threatened by Mr. Stoller, and you are



1  
2 going to hear testimony that Mr. Stoller wasn't averse  
3 to threatening people, because in addition to Mr. Allen he  
4 passed his threats on to other people. Why? Because,  
5 as you will hear from the witness stand, Mr. Stoller was  
6 worried that the United States Attorney's office and the  
7 Securities and Exchange Commission might find out what  
8 happened with the Training With The Pros stock.

9 And lastly, you are going to hear there was  
10 a desperate attempt on the part of Mr. Frank to get Mr. Allen  
11 to sign a perjurious affidavit, an affidavit which exculpated  
12 Mr. Frank, which said that he didn't have anything to do with  
13 it, and you are going to hear that Mr. Frank did have some-  
14 thing to do with it.

15 Now, in the few moments that I have remaining  
16 let me tell you very quickly about the witnesses you are  
17 going to hear. You are fortunate in one respect, because  
18 there is going to be one witness in the case, perhaps more,  
19 who can tell you what happened here, because he is going to  
20 admit that he was involved in this, and that witness's name  
21 is Ramon D'Onofrio.

22 And make no mistake about it, ladies and gentle-  
23 men, Mr. D'Onofrio is a swindler, he is a criminal, he has  
24 been convicted in four securities fraud cases, he was  
25 convicted back in -- he was indicted back in the late sixties,



1 convicted in 1972 for bankruptcy fraud, and he is facing  
2 17 years in prison.

3 But you are also going to hear from Mr.  
4 D'Onofrio, and Mr. D'Onofrio was a fugitive also, and he was  
5 arrested in London, England, in March of 1973, and that he  
6 waived extradition, he came back to the United States to  
7 testify and cooperate.

8 And I don't want you to think for any moment when  
9 you hear his testimony that your Government or Mr. Gould's  
10 Government or Mr. Feldshuh's Government condones in any way  
11 the actions of Mr. D'Onofrio, but he is being called because  
12 he was there and he can tell you what he saw and what he  
13 heard.

14 Remember this, though: Mr. D'Onofrio is one  
15 witness. I saw to you now the Government is going to  
16 call approximately 35 witnesses. Don't make up your mind  
17 after hearing the one witness, five witnesses, 15 witnesses  
18 or 20 witnesses. Wait until every witness has testified  
19 before you make a decision in your own minds.

20 The witnesses you are going to hear, well, you  
21 are going to hear people from the Securities and Exchange  
22 Commission who are going to tell you about the language of  
23 Wall Street, Regulation A offering circular, what these  
24  
25

1 mpb

32

2 terms mean, effective date and so forth.

3 You are also going to hear people from the SEC  
4 who participated in the investigation. You are going to  
5 hear people from Emanuel Deetjen, people who had conversa-  
6 tions with Mr. Herbert when Mr. Herbert was making desperate  
7 attempts to get the stock transfers. They are Swiss citizens,  
8 and they are going to be over here.

9 You are going to hear people whom Mr. Stoller made  
10 threats to, and, mind you, I repeat to you again: the evidence  
11 is going to show that when it appeared to Mr. Stoller that  
12 the authorities were going to find out what happened here,  
13 he started to throw the threats around.

14 You are also going to hear from the nominees, the  
15 people who, innocently or otherwise, allowed their names to  
16 be used in this fraud. You are going to hear from Mr. Allen's  
17 former attorney who was given that perjurious affidavit by  
18 Mr. Frank and asked to have Mr. Allen sign it, and you are  
19 going to hear from the Eleanors, the brokers, the people who  
20 got touted the stock, and you are going to hear from their  
21 customers.

22 You are also going to hear tape recordings,  
23 tape recordings of Mr. Stoller and Mr. Frank, discussing  
24 their involvement and the involvement of others in this  
25 case, and when you listen to the tape recording with Mr.

1

mpb

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2

Frank's voice on it, you must bear one thing in mind:

3

You are listening to a lawyer, you are listening to an

4

attorney.

5

MR. FELDSHUH: Objection, your Honor.

6

MR. GOULD: Your Honor, I object. I don't

7

know what is wrong --

8

THE COURT: This is unnecessary.

9

MR. SORKIN: I am sorry, your Honor.

10

THE COURT: Please finish up.

11

MR. SORKIN: Yes, your Honor.

12

Now, the last thing I want to tell you, ladies

13

and gentlemen, is that it is your function in this case to

14

try the case fairly and honestly. Try this case without

15

fear, without prejudice, without favor and without sympathy

16

to either the Government or to the defendants, because we

17

stand here before you as equals, and we are confident that

18

when the time comes you are going to decide this case and

19

you are going to decide it properly and you are going to

20

reach a verdict that will serve justice, because that is all

21

we are here about now, to serve justice.

22

Thank you, your Honor.

23

THE COURT: Mr. Gould and Mr. Feldshuh, how

24

do you want to do this?

25

MR. GOULD: If the Court please, ladies and

gentlemen of the jury:

My job here is to be a lawyer for my client, Mr. Stoller, just as Mr. Feldshuh and his associates are for their client.

Now, the Judge has explained to you that the purpose of an opening in cases like this is to attempt to delineate for you what the case is going to be about, what we are going to try to prove.

Of course, there is a big difference in function and in range between an opening for the prosecution and the opening for the defense. They know exactly what they are going to try to do, and what we do is a defensive type of operation, and a lot depends on what happened on their case.

So I can't make any ironclad contract with you as to just what we are going to do and who our witnesses are going to be. It is even in the realm of possibility that there won't be any witnesses. We don't know. We don't know those things. But we try at this stage in the case to act as attorneys as much as we can, precisely or as imprecisely what it is we are going to try to prove.

One thing I have no doubt about. We will prove before the Government's case is over, that every substantive allegation of wrongdoing, every time a man

1 on the witness stand says Stoller did something wrong,  
2 Stoller did something bad, or Frank, for that matter, because  
3 they are supposed to be chained together in a conspiracy  
4 here, they are supposed to be acting together.  
5

6 So every time one of these fellows on the wit-  
7 ness stand, one of these Government witnesses says to you  
8 "He did something wrong," I am going to be able to prove  
9 that you are hearing that allegation from a convicted felon,  
10 from a confessed perjurer, from a liar, from a man who is  
11 trying to buy his way out of something. Those things I  
12 believe I will be able to prove to you.

13 In other words, when he says, as my learned  
14 friend here has indicated, Stoller sat somewhere in Zurich  
15 with some other people and they concocted this scheme,  
16 I think I am going to be able to show you that the only one  
17 who says they did it is a felon who has been convicted himself  
18 who when I am finished with him is going to admit that he  
19 lied under oath so many times that it gets a little sick  
20 to hear about it.

21 There are no documents. And so I am very  
22 confident that we are going to be able to prove to you that  
23 the allegations of wrongdoing, the allegations of malignity,  
24 the allegations of fraud and deceit come to you from a bunch  
25 of rascals, rascals with a motive for telling lies.

1                   mpb  
2                   Well, you know sometimes rascals tell the truth.  
3                   It happens.     I don't know whom he puts on -- especially  
4                   he mentioned to you Mr. D'Onofrio, and he told you what  
5                   a scalawag he is -- and he is.     I am sure that when we  
6                   are finished with Mr. D'Onofrio you are going to see that he  
7                   is not only a liar, that he not only has got a motive for  
8                   telling these lies, but he is telling the lies as part of  
9                   a specific deal, a specific plan, a conspiracy in which he and  
10                  certain other people are taking part to lay the blame for what  
11                  they did on Stoller and Frank.

12                  That contract I will make with you, ladies and  
13                  gentlemen, with complete confidence.

14                  I can't tell you what witnesses I am going to  
15                  call before you, but I will make a contract with you right  
16                  now that when we are finished with the people who charge  
17                  these two men with criminality, you will be convinced  
18                  that they are confessed liars, confessed perjurers, con-  
19                  victed felons and participants in a scheme, and before very  
20                  long in this trial, we will also satisfy you who are the  
21                  authors of that scheme, and why that scheme has been  
22                  put into effect.

23                  Well, now, this is just an opening and I  
24                  really do hope I can keep this pact I have tried to make with  
25                  you, because, you know, you are engaged, you and we, lawyers.

1 Judge, the people in this court, we are all engaged in  
2 one of the most awesome, one of the most terrifying functions  
3 in which human beings can engage. In other words, we  
4 are all here as part of a process to decide whether Stoller  
5 and Frank are to be fit members of society or as to  
6 whether they are going to have the brand of a felon put on  
7 them, whether they are going to be stamped as something  
8 evil, something wrong.  
9

10 And that is a terrifying responsibility for human  
11 beings.

12 Now, his Honor will instruct you at the appro-  
13 priate time how you are to discharge that responsibility.  
14 I mention it at this stage of the case because it will be  
15 very apparent to you that my respected colleague, Mr. Feldshuh,  
16 and myself and these other young men at the counsel table, we  
17 take our task very, very seriously. We know that we are  
18 engaged in something frightening. We have been through it,  
19 as Mr. Sorkin has been through it, many times, and we know  
20 what a terrifying responsibility it is.

21 So, you know, we are a little uptight about this  
22 kind of thing. This is not a case about money. This is not  
23 a case where A has got to pay a few bucks to B.

24 This is a case where the lives of human beings  
25 are involved, their right to live as respected members of



our society. That is what is involved, and you and we and his Honor, we are all part of a machine that has to come out with a good result, with a fair, with a decent result.

Now, that result has got to be based upon evidence, evidence which comes out of the mouths of witnesses or from pieces of paper, and the only undertaking that I can make to you at this time is that based upon what we have learned about this case, what our study is, what I have heard from my friend here what he is going to prove, and whom he is going to prove it through, is going to come down to a proposition that you are going to have to discharge that terrifying responsibility on the basis of words that come out of evil men, men who admit they are liars, who admit they are perjurers, whose felonies are a matter of public record and who, as I anticipate, before they are through, are going to have to tell you about another scheme, not the scheme to sell Training With The Pros stock, but a scheme to get Marty Frank, and to get Phil Stoller, to get them, because if they get them they can go home free and will not have to spend some time in the penitentiary.

And that is what the case is going to be about.

Thank you.



THE COURT: Mr. Feldshuh.

MR. FELDSHUH: Your Honor, Madam Forelady,  
ladies and gentlemen of the jury:

Who is Mr. Frank, our client?

Mr. Frank is a lawyer, a respected member of the  
bar. He is accused of being part and parcel of a conspiracy.

Remember how the Government opened and how long  
it was before they really got down to saying what Mr. Frank  
did or how he came into this scheme, this so-called scheme  
that they propose to prove. You will recall from Mr.  
Sorkin's opening that there was something that happened  
prior to June 1968 that the name Frank was mentioned.  
There were other people involved. And as my dear friend  
Mr. Gould points out, you will hear from D'Onofrio on the  
stand, and when he testifies you won't hear the name of Mr.  
Frank until long down the road.

1 mprf 2h pm. 1

2 Mr. Frank has been called by my friend, Mr.  
3 Sorkin, the architect of this situation. But why did he  
4 call him the architect when he had nothing to do with the  
5 thinking or the thoughts concerning Training With The Pros  
6 back in 1968, that the first time he was spoken allegedly  
7 about this -- and we deny it -- I say this emphatically.  
8 We do deny it -- and I also say to you that Mr. Frank is  
9 going to take the stand before you and you can judge him  
10 as a witness.

11 Of course it is a grand scheme, isn't it, for me  
12 to go to my wife and say to her, "I am going to avoid  
13 detection, and you know how I am going to do it? I am  
14 going to put things in your name."

15 You heard Mr. Sorkin tell you this, that he  
16 said: "You know how else I am going to avoid detection"--  
17 because that is what it says in the indictment.

18 Mr. Frank, in order to avoid detection to these  
19 people, gave advice to put the stock in the nominees' names,  
20 and in avoiding of detection, as the proof will come out,  
21 and as Mr. Sorkin then was forced to admit in advance,  
22 the wife, the mother-in-law, the mother, of Mr. Stoller,  
23 the wife of Mr. Allen -- this is how one avoids detection  
24 about a scheme, by putting things in the name of one  
25 neighbor and one friend. That is the way Mr. Frank allegedly

*name trust*

1 mprf 2

2 told them to avoid detection.

3 Now, I ask you, when the proof comes off the stand  
4 and you listen to this and compare it with the allegations  
5 of the indictment about avoiding detection, when you  
6 see that you and each of you and I, too, in the course of  
7 my life have put things in my wife's name, but I guarantee  
8 to you, it wasn't to avoid detection.

9 Now, you will also learn that these people, the  
10 mother-in-law, the friend, they are plain people and  
11 housewives. Not business people. How does a housewife  
12 acquire money?

13 She either goes to the bingo game, and if she  
14 comes out with it, or she gets it from the household money  
15 that her husband gives her.

16 But when you think of \$900,000, is this what a  
17 housewife has? Of course not. This is the way the Government  
18 intends to prove the avoidance of detection by saying put  
19 it in your wife's name, put it in your mother-in-law's  
20 name.

21 Now, you have also heard about this secret  
22 coded account. This is how secret that account was.

23 Mr. Sorkin then said the name of Mr. Frank's  
24 secret coded account was Lance. Who is Lance? Lance  
25 is Mr. Frank's son. So, of course, it would take a great

1 mprf 3

2 amount of cogitation to determine that the use of the word  
3 Lance, if it were my son, this is how I am going to shield  
4 a coded account, by using my son's name.

5 Here too, as you must, when it comes off the  
6 witness stand, you must consider several things. First  
7 we deny that Mr. Frank gave that advice, but in evaluating  
8 the Government's case think about whether or not this is  
9 the way to avoid detection.

10 Now, one thing we will show: This account that  
11 Mr. Sorkin made much of never had one share of Training \*  
12 With The Pros stock, never had one share.

13 Now, Mr. Frank was alleged to be this great  
14 expert and, mind you, more than anything else, Mr. Sorkin  
15 then labeled him the architect. The proof is, not one  
16 single share was bought by Mr. Frank, by his family, his  
17 friends, his neighbors or anybody else, and they call him --  
18 the Government has the audacity to say that this lawyer who  
19 has been practicing for over 20 years, is the architect  
20 in this situation when you need only look at the facts.

21 Well, let's go one step further. Mr. Sorkin  
22 then talked about notarization and about a guaranteed  
23 signature.

24 Of course, you know you can go into a bank  
25 and have your signature guaranteed and all that that

1 mprf 4

2 guarantee means is that the bank knows the signature to be  
3 the signature of the person signing. It makes nothing  
4 -- makes no mention of the contents of what goes before  
5 that signature, and that's all it means, and what's more,  
6 a signature guarantee can be done by you and you and you  
7 and myself, people on the other side are prepared to accept  
8 the fact that I state that the person who wrote that name,  
9 I recognize his signature and guarantee it.

10 When you go into a bank --and we will prove this --  
11 you take a blank piece of paper and you write your name  
12 and the bank will place a stamp on it, "Signature Guaranteed,"  
13 without knowing what went on before it.

14 So this kind of thing, this kind of action  
15 by Mr. Frank that is part and parcel of the scheme is  
16 sheer nonsense, because they wouldn't need Mr. Frank.  
17 They could go to a bank or some other person and get their  
18 signatures guaranteed.

19 So for a moment I ask you to pause when you  
20 listen to the evidence as it comes off the witness stand  
21 and figure out the place of notarization that it had  
22 in the structure of the Government's case, and I say to  
23 you that it is irrelevant.

24 Now, that is the second thing to which the  
25 Government points as far as Mr. Frank is concerned.

1 mprf 5

2 And then the Government goes a little bit further  
3 and it says that Mr. Frank told Allen that he could  
4 sell the stock or arrange to have the stock sold to himself  
5 and thereupon to sell it to Bank Hofmann and that a  
6 document accordingly should be prepared.

7 Now, apart from emphatically denying that advice,  
8 let's look at it for a minute for what it is.

9 All that Mr. Frank did was he notarized a signa-  
10 ture on that document. How many times in our lives  
11 did we go into the corner cigar store with a piece of  
12 paper and we asked the corner cigar man, "Are you a notary?"  
13 And he says, "Yes," and you say, "I have signed this  
14 paper," and you pay him 25 cents and he stamps his notary  
15 stamp on it?

16 Now, is there anything more to this so-called  
17 document by Mr. Frank putting his notarization on it merely  
18 to the effect that it was Mr. Allen who signed the paper?  
19 Not for what he said --

20 MR. SORKIN: Your Honor, I must object.  
21 In the beginning I was guilty of it too, but it is beginning  
22 to sound like summation.

23 THE COURT: Well, I think we can go on to some-  
24 thing else. You can argue that at the close of the case.

25 MR. FELDSHUB: In any event, I have explained

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2 to you, ladies and gentlemen, what these so-called acts  
3 are and what we proposed to prove with respect to them.

4 Now, after this indictment came down, the one  
5 concerning Training With The Pros, we had another  
6 indictment as was explained by the Court, namely, the  
7 obstruction, so called, in which Mr. Frank is named in two  
8 counts, the first count being that he offered to pay money  
9 to Mr. Allen, so that Mr. Allen wouldn't come back.

10 I ask you please, listen to the evidence on  
11 that point. We deny it. And I will put Mr. Frank on the  
12 stand to testify, and you can evaluate his testimony.

13 And now the Government skips an act, they  
14 skip the second count. They don't say anything about Mr.  
15 Frank threatening anybody. They go to a third count,  
16 and they state that Mr. Frank prepared an affidavit  
17 in which he sought to have Mr. Allen state things what we  
18 call exculpating or excusing or indicating that Mr.  
19 Frank had no part and parcel of this situation.

20 We will prove that in the course of an investi-  
21 gation where a man is named as a defendant in an  
22 indictment and in order to defend himself, he seeks out  
23 the best available evidence he can as to the truth of  
24 the matters alleged in the indictment. We will show that  
25 this so-called affidavit was given to Mr. Allen



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2 with the specific instructions -- specific instructions  
3 to take that affidavit and bring it to his court-appointed  
4 lawyer, not any lawyer connected with us, and to review  
5 with that court-appointed lawyer as to the contents of  
6 that affidavit and to the wisdom of Mr. Allen, who is a  
7 named defendant, signing it, and who at that point was, as  
8 Mr. Sorkin points out, a witness that was going to get  
9 the Government's bounty, and you will hear more about that  
10 from the witness stand.

11 So therefore, this so-called obstruction is one,  
12 allegedly the indictment where I go to you and I say, please,  
13 don't sign this paper, take it to your lawyer, the lawyer  
14 appointed by the Court, and review it with him.

15 That is the way I intend to obstruct justice.  
16 That is what the charge is.

17 Madam Forelady, and ladies and gentlemen, I have  
18 endeavored to give you a capsulized view of our position  
19 in this case. You will hear more as the case goes on. I have  
20 tried to state briefly the posture of Mr. Frank here as a  
21 defendant, as a respected member of the Bar of this court,  
22 and as a man who understands the facts in this case in  
23 both indictments pleaded not guilty, and we will prove  
24 that to your satisfaction. Thank you, your Honor. Thank  
25 you.



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2 THE COURT: Mrs. diBartolo and ladies and  
3 gentlemen, as I explained this morning, we will suspend  
4 now in the trial of this case until next Monday morning,  
5 September 9th, and we will resume again in this room, and if  
6 you would, come into your jury room directly a few minutes  
7 before 10:00 and we will hope to get a prompt start then.

8 Incidentally, it will be our practice to observe  
9 a trial day of from 10:00 o'clock to about 4:15 or 4:30  
10 every day, with of course time out for lunch.

11 If there are any exceptions to that, I will try to  
12 anticipate or advise you of them in advance so you will  
13 know what is coming in the next day or so.

14 My request and indeed direction to you is that since  
15 we haven't heard any witness, of course, we haven't heard  
16 any evidence and therefore for that and other reasons, just  
17 put the case out of your mind and don't talk about it with  
18 your family or friends or think about it until we resume  
19 next Monday.

20 Now, in the interim, tomorrow, Thursday and Friday  
21 it will not be necessary for you to come to the building  
22 at all. In other words, you won't have to go to room 109  
23 or anything of that nature. You are free to go about your  
24 business for the rest of this week without coming to court.

25 I trust you understand that but I want to make it

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2 abundantly clear. Therefore, without any further ceremony,  
3 I will say goodnight to you and we will see you next  
4 Monday morning in this room. You go to the jury room first,  
5 10:00 o'clock Monday September 9th of this year.

6 Have a good weekend.

7 (Jury left courtroom.)

8 THE COURT: Gentlemen, would you please remain  
9 briefly.

10 Now, gentlemen, someone raised the problem of  
11 3500 material and I cut them off because I thought it was  
12 premature --

13 MR. GOULD: Before we get to 3500 material, your  
14 Honor, and perhaps bearing on it, there seems to be some  
15 kind of difference between my colleagues and Mr. Sorkin about  
16 the discovery material we are supposed to get.

17 I asked for it at the end of last week and I was  
18 advised it wasn't available. Perhaps we may have some kind  
19 of understanding.

20 Mr. Alenstein, will you please explain to His  
21 Honor what the problem is.

22 MR. ALENSTEIN: There probably isn't much of a  
23 problem, your Honor. We just can't seem to get the  
24 copies.

25 THE COURT: Copies of what?

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2 MR. ALENSTEIN: The documents we have been shown,  
3 and we have completed looking at the documents that the  
4 Government is making available for discovery and inspection.  
5 It's a question of now getting copies of them.

6 Now, Mr. Sorkin has told me that the Government  
7 doesn't have the personnel to make the copies, and he has  
8 rejected my suggestion that he send them out to be  
9 professionally copies at a place of his choice at our expense  
10 and he says he will consent to have them copies, but we  
11 can't find an opportunity when he is ready to let our man  
12 come up.

13 MR. SORKIN: Your Honor, if I can respond to that,  
14 your Honor, Mr. Alenstein and Mr. Grimes and four of their  
15 associates were down here last week or the week before --  
16 I'm not sure, some three weeks before trial, when they had  
17 three months to do this. I gave them all the documents --  
18 let me finish, please.

19 MR. GOULD: Nobody is raising any point with you.  
20 Mr. Alenstein is talking to me.

21 MR. SORKIN: I told Mr. Alenstein to send somebody  
22 down today and we would allow them to make all the  
23 copies they want. I didn't know that we were running into  
24 the afternoon. I told Mr. Alenstein that they could send  
25 somebody down at 8:00 o'clock tomorrow morning, and they

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2 could make all the copies themselves.

3 THE COURT: Let's keep the blood pressures down  
4 here now. Doesn't that resolve it?

5 MR. GOULD: That isn't what he said to Mr.  
6 Alenstein. But there is no use of arguing here.

7 THE COURT: No, I'm too naive to hear some of  
8 these details.

9 MR. GOULD: We will have a man there tomorrow  
10 morning to make the copies.

11 THE COURT: What time would you want to do this,  
12 gentlemen?

13 MR. SORKIN: Your Honor, I believe in the office  
14 tomorrow morning at 8:30 and I will be happy to turn over  
15 the documents to --

16 MR. GOULD: 8:30 tomorrow morning one of our  
17 people will be here.

18 Now, I am sorry for the interruption. Let's get  
19 to the 3500 material.

20 MR. FELDSHUN: What is your Honor's pleasure  
21 on that?

22 THE COURT: Well, I want 3500 material delivered  
23 in advance: here in this building, so we don't have any  
24 delays or any pressures on defense counsel to ask for delays.

25 Now, there are a number of ways of doing this, but

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2 my suggestion is -- is D'Onofrio going to be the first  
3 witness?

4 MR. SORKIN: Not the first, but we anticipate  
5 that he will take the stand on Monday, the 9th.

6 THE COURT: Well, I would like to have the first  
7 three witnesses who will cover the first couple of days,  
8 I expect -- if it is D'Onofrio I expect he will cover a  
9 couple of days -- I would like to have his and the  
10 two other first witnesses you will call delivered to  
11 defense counsel for further study no later than Thursday  
12 morning at 10:00 o'clock somewhere in the confines of this  
13 marvelous building.

14 Therefore, I want everybody to get their 3500  
15 material at least 24 hours in advance and hopefully if  
16 you can do better than that, 48 hours in advance, which  
17 I think we can do without prejudice to the Government.

18 MR. SORKIN: Your Honor, I was preparing a letter  
19 which should be up to your Honor's chambers first thing in  
20 the morning which agrees with your Honor's suggestion. We  
21 will turn over the 3500 material 24 hours in advance of the  
22 witness testifying.

23 THE COURT: Well, spare me the letter. I don't like  
24 these signs of agreement. They frighten me.

25 Let me go back a minute. Are you willing to  
produce D'Onofrio and the other two of the first

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2 three Government witnesses no later than this Thursday morning  
3 at 10:00 o'clock, September 5th?

4 MR. SORKIN: Well, one day on't make any difference.  
5 We are, your Honor.

6 THE COURT: All right. Now, thereafter, can't you  
7 keep it coming to these gentlemen in advance, at least 24  
8 hours? In many cases it is routine enough, Why not  
9 48 hours?

10 MR. SORKIN: Your Honor, what I am saying is, we  
11 will try. We can't anticipate the witnesses.

12 THE COURT: Of course. If we go too fast or we  
13 go too slow those things happen, but all I want to do is  
14 solve a problem.

15 Is that all right with you?

16 MR. FELDSHUB: Thank you, sir.

17 MR. GOULD: Fine.

18 THE COURT: Now, what else need we debate?

19 MR. SORKIN: Well, since your Honor has indicated  
20 that you would rather not have letters --

21 THE COURT: Only on the 3500 material.

22 MR. SORKIN: I will destroy the letter and tell  
23 you that we have premarked all exhibits.

24 THE COURT: All right. I appreciate that.

25 MR. SORKIN: Additionally, your Honor, and this

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2 presented a problem in the Eastern District, Mr. D'Onofrio  
3 is totally deaf in his left ear, and I am informed by him  
4 and I see the way this courtroom is set up, that his left  
5 side will be to your Honor. I am informed by him that in  
6 the Eastern District when Judge Weinstein wanted to direct  
7 him to do something or things of that sort, he at times  
8 would have to tap his left shoulder or lean forward, and  
9 I point this out to your Honor so it doesn't raise an  
10 embarrassing situation at the trial.

11 MR. FELDSHUH: I might add, too, your Honor,  
12 that I have a slight hearing impediment and if  
13 Mr. Sorkin keeps dropping his voice I won't hear him either.  
14 So I would ask him to keep his voice up.

15 MR. GOULD: My only defects are mental, your  
16 Honor.

17 Thank you very much, your Honor.

18 MR. FELDSHUH: Thank you, Judge.

19 (Adjourned to September 9, 1974, 10:00 o'clock a.m.)  
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